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10 **UNITED STATES DISTRICT COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **SAN JOSE DIVISION**

13  
14 IN RE: HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION

15 THIS DOCUMENT RELATES TO:  
16 ALL ACTIONS  
17  
18  
19

Master Docket No. 11-CV-2509-LHK

**DEFENDANTS' JOINT RENEWED  
ADMINISTRATIVE MOTION TO SEAL  
PORTIONS OF THE EXPERT  
REPORTS OF DR. LEAMER AND DR.  
MURPHY**

**I. RENEWED MOTION TO SEAL**

In its April 8, 2013 Case Management Order (Dkt. 388), the Court directed the parties to file renewed motions to seal the expert reports of Dr. Leamer and Dr. Murphy consistent with the good cause standard for sealing as set forth in the Court's Order Granting in Part and Denying in Part Motions to Seal ("Sealing Order") (Dkt. 273). Accordingly, Defendants Adobe Systems Inc., Apple Inc., Intel Corp., Intuit Inc., Google, Inc., and Lucasfilm Ltd. ("Defendants") hereby jointly move to renew their requests to seal only certain, more limited portions of the following documents:

(1) portions of the Expert Report of Edward E. Leamer, Ph.D. ("Leamer Report") (Dkt. 190);

(2) portions of the Expert Report of Professor Kevin M. Murphy ("Murphy Report") (Dkt. 230);

(3) portions of the Reply Expert Report of Edward E. Leamer, Ph.D. ("Leamer Reply Report") (Dkt. 249);

(4) portions of Defendants' Joint Administrative Motion for Leave to Supplement the Record ("Motion to Supplement") (Dkt. 263) and Supplemental Declaration of Kevin Murphy ("Murphy Supp. Decl.") (Dkt. 263-3); and

(5) portions of Plaintiffs' Opposition to Defendants' Joint Administrative Motion for Leave to Supplement the Record ("Opposition to Motion to Supplement") (Dkt. 270) and Declaration of Dr. Edward E. Leamer ("Leamer Opp. Decl.") (Dkt. 270-1) .

In accordance with the Court's Case Management Order, Defendants have re-reviewed these documents and substantially narrowed those portions that they seek to redact from the public record. These more limited portions that Defendants request to seal reflect their most highly sensitive and confidential information, the public disclosure of which would cause serious harm to Defendants, as detailed in the supporting declarations of Lin W. Kahn, Christina J. Brown, Anne M. Selin, Frank Busch, Catherine T. Zeng, Justina K. Sessions, and James M. Kennedy.

1 **II. GOOD CAUSE EXISTS TO SEAL DEFENDANTS' CONFIDENTIAL**  
 2 **INFORMATION IN THE MORE LIMITED PROPOSED REDACTIONS**

3 As the supporting declarations demonstrate, the above-referenced documents contain  
 4 highly confidential and commercially sensitive information about employee compensation,  
 5 including Defendants' compensation data, as well as Defendants' compensation and recruiting  
 6 practices, strategies, and policies. Defendants designated the foregoing information  
 7 "Confidential" or "Attorneys Eyes Only" under the Protective Order, and have otherwise kept  
 8 the sealed information confidential. The public disclosure of this information would cause each  
 9 Defendant harm by giving third-parties insights into confidential and sensitive aspects of each of  
 10 the Defendants' strategies, competitive positions, and business operations, allowing these third-  
 11 parties to potentially gain an unfair advantage in dealings with and against each of the  
 12 Defendants.

13 This Court has sealed similar compensation and recruiting information in this case. (*See*  
 14 *Sealing Order*, Dkt. 273). A significant portion of the information sought to be sealed is  
 15 employee compensation data. This type of information is regularly sealed because of its  
 16 confidential and private nature. *See Renfro v. Unum, et al.*, No. 09-2661, 2010 BL 104197 (N.D.  
 17 Cal. May 10, 2010) (granting a motion to seal records containing plaintiffs' salary information);  
 18 *Nettles v. Farmers Ins. Exch.*, No. C06-5164, 2007 WL 858060, at \*2 (W.D. Wash. Mar. 16,  
 19 2007) (holding that salary review notices for third parties "who have not chosen to have their  
 20 salary history placed into the public record" could be sealed.); *EEOC v. Kokh, LLC*, No. CIV-07-  
 21 1043, 2010 U.S. Dist. LEXIS 82526, at 1 n.1 (W.D. Okla. Aug. 09, 2012) (noting that portions of  
 22 summary judgment materials were filed under seal because they contained "confidential salary  
 23 information").

24 Similarly, information regarding compensation policies, practices and decisions, as well  
 25 as internal recruiting or hiring policies, practices, and strategies are regularly sealed by other  
 26 courts because of their confidential and private nature. *See, e.g., In re Wells Fargo Loan*  
 27 *Processor Overtime Pay Litig.*, No. C 07-01841, 2008 U.S. Dist. LEXIS 53616, at \*16-17 (N.D.  
 28 Cal. June 09, 2008) (noting that a "compensation policy" was filed under seal); *Hertz Equip.*

1 *Rental Co. v. Useda*, No. CV-10-4953, 2010 BL 259718, at \*2 (N.D. Cal. Nov. 02, 2010)  
 2 (granting a temporary restraining order to enjoin a former employee from using a company's  
 3 "confidential and/or trade secret employee compensation information"); *Krieger v. Atheros*  
 4 *Commc'ns, Inc.*, Case No. 11-CV-00640, 2011 U.S. Dist. LEXIS 68033 at \*3-4 (N.D. Cal. June  
 5 25, 2011) (holding that a company could seal a presentation from its investment adviser that  
 6 contained "sensitive and confidential information, including long-term financial projections,  
 7 discussions of business strategy, and competitive analyses"); *Network Appliance, Inc. v. Sun*  
 8 *Microsystems Inc.*, Case No. C-07-06053, 2010 U.S. Dist. LEXIS 21721, at \*8 (N.D. Cal. Mar.  
 9 10, 2010) (sealing "internal information regarding [defendant's] business strategies and  
 10 opportunities that were not widely distributed"); *see also TriQuint Semiconductor, Inc. v. Avago*  
 11 *Techns. Ltd.*, Case No. CV 09-531, 2011 U.S. Dist. LEXIS 143942, at \*9 (D. Ariz. Dec. 13,  
 12 2011) (granting motion to seal "market analysis information," under "compelling" reason  
 13 standard applicable to dispositive motions, including a "spreadsheet tracking information  
 14 regarding potentially competitive products," and other business strategy documents, such as  
 15 information relating to "product competitiveness, and market and technological opportunities  
 16 and risks").

### 17 **III. CONCLUSION**

18 Defendants respectfully request that the Court order the expert materials described above  
 19 to be placed under seal.

20 In accordance with Civil Local Rule 79-5(d), Defendants' proposed redacted versions of  
 21 these materials are attached hereto as Exhibits A-1 through G-1. Pursuant to the Court's order  
 22 on January 11, 2013 (Dkt. 269), copies of these materials with the proposed redactions  
 23 highlighted in yellow are attached hereto as Exhibits A-2 through G-2. These documents will be  
 24 lodged with the Clerk in hard copy and served on counsel for Plaintiffs.

1 Dated: April 12, 2013

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8 **ATTESTATION:** Pursuant to General Order 45, Part X-B, the filer attests that concurrence in  
9 the filing of this document has been obtained from all signatories.